coastal communities environmental and public health concerns. Though the authorized funding level in Title VI is less than I proposed in H.R. 4235, I am pleased to see that the integrity of the structure of my bill was not breached.

Finally, I would like to briefly thank my staff, David Kay, for all his hard work and all the Members who were supportive of my proposal. I am confident that the broad-based support that we garnered in the form of cosponsors to H.R. 4235 was instrumental in the bill's eventual inclusion as Title VI of H.R. 2204.

Mr. Speaker, I urge that the House support H.R. 2204. I urge the Senate to quickly act to pass it as well and I urge our President to sign this bill into law.

SALUTING RON JAMES—INTREPID DEFENDER OF THE AMERICAN FLAG

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1998

Mr. SOLOMON. Mr. Speaker, I would like to take this opportunity as we come to the close of the 105th Congress, to recognize a man who has been so instrumental in efforts to protect the eternal symbol of our great nation—the American Flag. That man is Ron James.

Those of us ingrained in the fight to enact the constitutional amendment prohibiting the physical desecration of the American Flag identify Ron James, who we also know as Ronald M. Sorenson, as a true patriot. Ron has devoted countless volunteer hours to promoting the amendment that will return the right of the American people to protect the American Flag—the perennial symbol of American ideals and the countless sacrifices that have been made in securing them. A former Marine, Ron has extended his service to his country well beyond his time in the armed services. His actions on behalf of all veterans and in support of protecting the American flag are truly commendable.

Mr. Speaker, I invite all Members to join me in paying tribute to Ron James, a true American patriot.

MULTIPLE CHEMICAL SENSITIVITY

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1998

Mr. SANDERS. Mr. Speaker, I rise today to discuss the issue of Multiple Chemical Sensitivity as it relates to both our civilian population and our Gulf War veterans. I continue the submission for the RECORD the latest ''Recognition of Multiple Chemical Sensitivity'' newsletter which lists the U.S. federal, state and local government authorities, U.S. federal and state courts, U.S. workers' compensation boards, and independent organizations that have adopted policies, made statements, and/or published documents recognizing Multiple Chemical Sensitivity disorders for the benefit of my colleagues.

RECOGNITION OF MCS IN 8 U.S. FEDERAL COURT DECISIONS

In decisions affirming MCS (by this or another name) as a real illness, handicap or disability under:

Daubert: *Kannankeril* v. *Terminix Internationals Inc.* Third Circuit Court of Appeals (CA 3), No 96–5818 [17 Oct. 1997, 5 pages, R–148], overturning a lower court's summary judgement for the defendant (District of NJ, No 92–cv–03150) on a Daubert motion, saying it had ''improperly exercised its gate keeping role by excluding'' the plaintiff's medical expert, Dr. Benjamin Gerson, and his testimony on causation—specifically his view that the plaintiff developed MCS as a result of overexposure to chlorpyrifos. [Terminix had sprayed Dursban in the plaintiff's home 20 times in 17 months.] The court described MCS as becoming ''sensitized to multiple other chemicals'' and said ''It is an acknowledged scientific fact that chlorpyrifos, the active ingredient in Dursban, is harmful to humans and can cause the very symptoms displayed by Dr. Kannankeril,'' which included headaches, fatigue, numbness, memory and concentration problems, sleeplessness, nausea, and skin rashes. Even though Dr. Gerson had not examined the plaintiff or written about the toxic effects of organophosphates, the court said his ''opinion is not a novel scientific theory'' and ''is supported by widely accepted scientific knowledge of the harmful nature of organophosphates.''

Fair Housing Act: *United States* v. *Association of Apartment Owners of Dominis West et al*, Case No. 92–00641 (D. Ha.) 25 August 1993 [19 pages, R–61], in which a consent order won by the Department of Justice's Housing and Civil Justice Enforcement Section requires the management of an apartment complex in Honolulu to take several steps to accommodate a tenant with MCS.

Rehabilitation Act: *Vickers* v. *Veterans Administration*, 549 F. Supp. 85, W.D. Wash. 1982 [4 pages, R–56], in which the plaintiff's sensitivity to tobacco smoke was recognized as handicap by the VA and the court, but his request for totally a smoke-free environment was denied on the grounds that the VA had already made sufficient reasonable efforts; *Rosiak* v. *Department of the Army*, 679 F. Supp. 444, M.D. Pa. 1987 [6 pages, R–57], in which the court, although finding the plaintiff ''not otherwise qualified'' to continue working, implicitly recognized his MCS disability, as did the Army, which the court found had made sufficient reasonable (albeit unsuccessful) efforts to accommodate the plaintiff's chemical sensitivity.

Social Security Disability Act: *Slocum* v. *Califano (Secretary, HEW)*, Civil No. 77–0298 (D. Haw.) 27 August 1979 [9 pages, R–60], in what is believed to be the earliest decision of any court recognizing MCS, the US District Court of Hawaii awarded disability benefits to a plaintiff whose *pro se* claim of ''chemical hypersensitivity'' dated from 1 May 1968; *Kornock* v. *Harris*, 648 F.2d 525, 9th Cir. 1980 [3 pages, R–59]; and *Kouril* v. *Bowen*, 912 F.2d 971, 974, 8th Cir. 1990 [7 pages, R–58]; *Creamer* v. *Callahan*, Civil No. 97–30040–KPN (D. Mass.), 5 November 1997, [7 pages, R–150] reversing and remanding the decision of the SSA Commissioner, who agreed that the administrative law judge's ''analysis was flawed with respect to MCS.'' The court ordered the Commissioner to file a supplemental memorandum on SSA's ''position with respect to MCS,'' which he did—specifically stipulating that SSA ''recognizes multiple chemical sensitivity as a medically determinable impairment'' (31 October 1997, 2 pages, R–164).

RECOGNITION OF MCS IN 21 U.S. STATE COURT DECISIONS

In decisions affirming MCS illness (by this or some other name) as a handicap or injury in cases regarding:

Housing Discrimination: *Lincoln Realty Management Co.* v. *Pennsylvania Human Relations Commission*, 598 A.2d 594, Pa. Commw. 1991 [47 pages, R–62].

Employment Discrimination: *County of Fresno* v. *Fair Employment and Housing Commission of the State of California*, 226 Cal. App. 3d 1541, 277 Cal. Rptr. 557 Cal App. 5th Dist. 1991 [11 pages, R–63]; and *Kallas Enterprises* v. *Ohio Civil Rights Commission*, 1990 Ohio App. 1683, Ohio Ct. App. May 2, 1990 [6 pages, R–64].

Health Services Discrimination: *Ruth, Barbara; June P. Hall; Cricket J. Buffalo; Susan Molloy; and Cathy Lent* v. *Kenneth Kizer/Molly Coe, Director, CA. Department of Health Services*, No. 665629–8, 1989 [1 page, R–65], in which the plaintiffs won the right to receive oxygen treatments for MCS by successfully appealing to the CA Superior Court of Alameda County which overturned the prior ruling of an administrative law judge.

Negligence/Toxic Tort: *Melanie Marie Zanini* v. *Orkin Exterminating Company Inc. and Kenneth Johnston*, Broward County Circuit Court, No. 94011515 07, verdict of 7 December 1995 and final judgement of 28 December 1995 [4 pages, R–92], in which the jury ruled that the pesticide applicator's negligence in applying Dursban was the legal cause of damage to the plaintiff, who was awarded a total of $1,000,000 in damages by the jury. This was subsequently reduced to $632,500 in the final judgement.; *Ruth Elliott, et al.*, v. *San Joaquin County Public Facilities Financing Corp. et al.*, California Superior Court, San Joaquin County, No. 244601, 31 October 1996 [2 page verdict report, R–112] in which a public lease-back corporation was held responsible for 14 awards of partial to permanent disability based on MCS and various other health complaints that started after extensive renovations were inadequately ventilated (half the roof air conditioners did not work). Awards ranged from $15,000 to $900,000 each (total $4,183,528) *Linda Petersen and Eleni Wanken* v. *Polycap of California*, California Superior Court, Alameda County, No. H7276–0, 1 April 1988 [1 page verdict report, R–143], in which plaintiffs were awarded $250,000 and $13,000, respectively, for MCS they developed after a polyurethane roofing material was installed at two school buildings where they worked. These jury awards led to prompt settlement of a dozen other cases against the same defendant.

Tort of Outrage and ''Deliberate Intention'' Exception to Workers Compensation: *Birklid et al* v. *The Boeing Company*, Supreme Court of the State of Washington, 26 October 1995, No. 62530–1, in which the court issued an EN BANC ruling in response to a question it ''certified'' from the Ninth Circuit Court of Appeals. By unanimous 9–0 decision, the WA Supreme Court found sufficient evidence of Boeing's deliberate intent to harm its employees from chemical exposure that the 17 workers who claim they were physically and/or emotionally injured as a result (including those with MCS) can sue the company for civil damages in addition to their workers' compensation benefits. (This ''deliberate intention'' exception was last allowed by the court in 1922). The court also found that the chemically-injured workers had a claim under the Tort of Outrage for recovery of damages arising from Boeing's intentional infliction of emotional distress. The matter now returns to the U.S. District Court for the Western District of Washington for a jury trial. [25 page decision with a 2 page background paper from Randy Gordon, one of the plaintiffs' attorneys., R–66].

Workers' Compensation Appeals (State Courts only, others follow):

Arizona: *McCreary, Robert* v. *Industrial Commission of Arizona,* 835 P.2d 469, Arizona Court of Appeals 1992 [1 page, R–70];

California: *Kyles* v. *Workers' Compensation Appeals Board et al,* No. A037375, 240 Cal. Rptr. 886, California Court of Appeals 1987 [9 pages, R–68]; *Menedez* v. *Continental Ins. Co.,* 515 So.2d 525, La. App. 1 Cir. 1987 [6 pages, R–69];

Kansas: *Armstrong, Dan H,* v. *City of Wichita,* No. 73038, 907 P.2d 923, Kansas Court of Appeals [9 pages, R–185];

Nevada: *Harvey's Wagon Wheel, Inc. dba Harvey's Resort Hotel* v. *Joan Amann, et al,* No. 25155, order dated 25 January 1995, Nevada Supreme Court [4 pages, R–93], in an order dismissing the casino's appeal of a district court ruling that reversed the decision of an appeals officer in favor of a group of 23 claimants. The Supreme Court agreed with the lower court's finding that the officer had ''overlooked substantial evidence offered by the [23] claimants that clearly supported a causal relation between their work place injuries [due to pesticide exposure] and their continuing disabilities.''

New Hampshire: *Appeal of Denise Kehoe* (NH Dept. of Labor Compensation Appeals Board), No. 92–723, Supreme Court of New Hampshire 1994, 648 A.2d 472, which found that ''MCS Syndrome'' due to workplace exposure is an occupational disease compensable under NH's workers' compensation statute and remanded to the Compensation Appeals Board ''for a determination of whether the claimant suffers from MCS and, if she does, whether the workplace caused or contributed to the disease'' [3 pages, R–71, see also]; (2nd) *Appeal of Denise Kohoe* (NH Dept. of Labor Compensation Appeals Board), No. 95–316, Supreme Court of New Hampshire 13 November 1996, in which the Court again reversed the Compensation Appeals Board, finding both that the claimant had MCS (legal causation) and that ''her work environment probably contributed to or aggravated her MCS'' (medical causation) [5 pages, R–127];

Oregon: *Robinson* v. *Saif Corp,* 69 Or. App. 534; petition for review denied by 298 Ore. 238, 691 P.2d 482 [5 pages, R–67]; *Saif Corporation and General Tree* v. *Thomas F. Scott,* 824 P.2d 1188, Ore.App. 1992 [6 pages, R–89];

South Carolina: *Grayson* v. *Gulf Oil Co,* 357 S.E.2d 479, S.C. App. 1987 [6 pages, R–88];

West Virginia: *Arlene White* v. *Randolph County Board of Education,* No. 93–11878, 18 November 1994 decision of Administrative Law Judge Marshall Riley, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total disability and medical payments by Workers' Compensation Division [7p, R–131]; *Julie Likens* v. *Randolph County Board of Education,* No. 93–14740, 4 April 1995 decision of Chief Administrative Law Judge Robert J. Smith, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total and medical disability by Workers' Compensation Division [8p, R–132]; and *Barbara H. Trimboli* v. *Randolph County Board of Education,* No. 92–65342–OD, 10 June 1996 decision of Administrative Law Judge Terry Ridenour, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total disability and medical payments by Workers' Compensation Division [5 pages, R–133].

RECOGNITION OF MCS IN 14 WORKERS' COMPENSATION BOARD DECISIONS

In decisions affirming MCS illness (by this or some other name) as a work-related injury or illness in:

Alaska: *Hoyt, Virginia* v. *Safeway Stores, Inc,* Case 9203051, Decision 95–0125, Alaska Workers' Compensation Board 1995 [21 pages, R–73].

Connecticut: *Sinnamon* v. *State of Connecticut, Dept. of Mental Health,* 1 October 1993 Decision of Nancy A. Brouillet, Compensation Commissioner, Acting for the First District, Conn. Workers' Compensation Commission. [10 pages, R–106]. The commissioner, citing testimony from Dr. Mark Cullen, among others, found ''the great weight of medical evidence supports the diagnosis of MCS syndrome causally related to the Claimant's exposure while in the course of her employment'' in state office buildings with poor indoor air quality. She ordered payment of temporary permanent disability benefits as well as payment ''for all reasonable and necessary medical treatment of the Claimant's MCS syndrome.''; *O'Donnell* v. *State of Connecticut, Judicial Department,* 22 May 1996 Decision of Robert Smith Tracy, Compensation Commissioner, Fourth District, Conn. Workers' Compensation Commission. [5 pages, including cover letter from plaintiff's attorney, R–107]. The commissioner recognized MCS ''caused by numerous exposures to pesticides at work . . . and exacerbated by repeated exposure to other odors and irritants at work'' in a Juvenile Court building. Because ''this claimant has been given special accommodations since March 1992 when she was granted an isolated office and the stoppage of spraying of pesticides'' that allowed her to continue working full-time, no monetary benefits were awarded.

Delaware: *Elizanne Shackle* v. *State of Delaware,* Hearing No. 967713, Delaware Industrial Accident Board in and for New Castle County, December 1993 [21 pages, R–142] awarding total temporary disability benefits and ''one attorney's fee'' based on the IAB's finding that the claimant's work exposure (in a state correctional facility built by prison labor) had ''caused her present respiratory symptoms'' and that this ''has sensitized her to other odors.''

Maryland: *Kinnear* v. *Board of Education Baltimore County,* No. B240480, Md. Workers' Compensation Commission, 28 June 1994 [1 page, R–75].

Massachusetts: *Sutherland, Karen* v. *Home Comfort Systems by Reidy and Fidelity & Casualty Insurance of New York,* Case No. 023589–91, 8 February 1995 decision of Mass. Department of Industrial Accidents [21 pages, R–74]; *Steven Martineau* v. *Fireman's Fund Insurance Co,* Case No. 9682387, 15 May 1990 decision of Administrative Judge James McGuinness, Jr., Mass. Industrial Accident Board, ordering that the employer pay for disability benefits as well as ''all costs, including transportation, lodging and meals, incurred or to be incurred in the course of seeking and obtaining reasonable medical and related care . . . including treatment rendered by and at the Center for Environmental Medicine.'' [18 pages, R–125]; *Elaine Skeats* v. *Brigham & Women's Hospital,* Case No. 02698693, 24 October 1996, decision of Administrative Judge James McGuinness, Jr., Mass. Industrial Accident Board, ordering that the employee ''compensate the employee for expenses incurred in the course of satisfying the historic and prospective prescriptions of Doctors . . . prompted by her industrial injury and relative to: intravenous therapy, vitamin and nutritional supplements, message therapy, air conditioning, air purification, air filtration, masking, water filtration, allergy bedding, laboratory testing and mileage travelled.'' [14 pages, R–126]

New Mexico: *Elliott, Erica* v. *Lovelace Health Systems and Cigna Associates Inc,* No. 93–17355, 8 November 1994, decision of Rosa Valencia, Workers' Compensation Judge, finding that MCS was triggered by glutaraldehyde and Sick Building Syndrome for which employer had been given timely notice. Also supported Elliott's refusal to return to work in the buildings that made her sick buildings as ''reasonable under the circumstances.'' Decision granted 3 months of temporary total disability pay followed by permanent partial disability for ''500 weeks or until further order of the Court'' [15 pages, R–113]

New York: *Crook* v. *Camillus Central School District #1,* No. W998009, 11 May 1990, decision of Barbara Patton, Chairwoman, NY State Workers' Compensation Board specifies ''modify accident, notice and causal relationship to multiple chemical sensitivity'' and awarded continuing benefits of $143.70 per week [1 page, R–108].

Ohio: *Saks* v. *Chagrin Vly. Exterminating Co Inc.,* No. 97–310968, 18 September 1997 [2 pages, R–151], decision of District Hearing Officer Arthur Shantz, recognizing claim of chemical sensitivity; and *Kelvin* v. *Hewitt Soap Company,* No. 95–599131, 5 June 1996 [2 pages, R–152], decision of District Hearing Officer Steven Ward, recognizing claim of multiple chemical sensitivity as ''occupational disease'' contracted ''in the course of and arising out of employment.''

Washington: *Karen B. McDonnel* v. *Gordon Thomas Honeywell,* No. 95–5670, 22 October 1996 decision of Judge Stewart, WA State Board of Industrial Appeals, recognizing ''toxic encephalopathy'' as an acceptable diagnosis for MCS-induced permanent partial disability [2 p, R–118].

THE CAP ON MEDICARE THERAPY SERVICES MUST BE REMOVED

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1998

Mr. GALLEGLY. Mr. Speaker, It has come to my attention that a pending change to Medicare policy enacted as part of the 1997 Balanced Budget Act will curtail access to needed outpatient therapy services for persons with severe disabilities and chronic health conditions. Effective January 1, 1999, this change limits payments for Medicare outpatient occupational therapy and physical therapy/speech-language pathology services (combined) to $1,500 per beneficiary per year. This is an arbitrary limit that will cause thousands of Medicare beneficiaries with disabilities to forfeit necessary care in excess of the $1,500 level, force them to switch health care providers when the $1,500 cap is reached, or require them to struggle to pay for continuing services out-of-pocket. Individuals recovering from stroke, who have Alzheimer's Disease, or who have advanced multiple sclerosis are among the Medicare beneficiaries that often need therapy services beyond that available under the $1,500 cap. It is these individuals and their families who will be hurt by this pending provision.

I know that major national consumer, professional, and provider organizations are calling for the repeal of this provision or, at a minimum, for a delay in its implementation. For the past six months, these groups have explained that such limits on rehabilitation services are necessary, are not grounded in rational policy, and will carry harmful consequences for Medicare beneficiaries. Despite much discussion, it appears that this Congress will conclude its work without addressing the $1,500 Medicare cap issue.

I share the concern that many Medicare beneficiaries are at risk of losing access to